

AMENDED IN ASSEMBLY APRIL 15, 1998
AMENDED IN ASSEMBLY MARCH 31, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1977

Introduced by Assembly Member Campbell

February 17, 1998

An act to amend Section 5322 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1977, as amended, Campbell. Public utilities: telecommunications services: household goods carriers.

(1) Existing law prohibits telephone companies from providing telephone service to unlicensed household goods carriers. Existing law places the enforcement of this prohibition with the Public Utilities Commission. Existing law makes it a crime to fail to comply with a demand, as specified, by the commission.

This bill would require telephone companies and related entities, as specified, *upon the order of a magistrate*, to provide the commission, or an authorized official of the commission, as specified, access to the subscriber billing records of, or any applications for telephone service from, an unlicensed household goods carrier. This bill would expand the scope of an existing crime, thus creating a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5322 of the Public Utilities Code
2 is amended to read:

3 5322. (a) The Legislature finds and declares that
4 advertisement and use of telephone service is essential for
5 household goods carriers to obtain business and conduct
6 intrastate moving services. The unlawful advertisement
7 by unlicensed household goods carriers has required
8 properly licensed and regulated household goods carriers
9 to compete with unlicensed household goods carriers
10 using unfair business practices. Unlicensed household
11 goods carriers have also exposed citizens of the State of
12 California to unscrupulous persons who portray
13 themselves as properly licensed, qualified, and insured
14 household goods carriers. Many of these unlicensed
15 household goods carriers have been found to have
16 perpetrated acts of theft, fraud, and dishonesty upon
17 unsuspecting citizens of the State of California.

18 (b) (1) The Legislature finds and declares that the
19 termination of telephone service utilized by unlicensed
20 household goods carriers is essential to ensure the public
21 safety and welfare. Therefore, the commission should
22 take enforcement action as specified in this section to
23 disconnect telephone service of unlicensed household
24 goods carriers who unlawfully advertise moving services
25 in yellow page directories and other publications. The
26 enforcement action provided for by this section is
27 consistent with the decision of the Supreme Court of the
28 State of California in *Goldin, et al. v. Public Utilities*
29 *Commission et al.*, 23 Cal. 3d 638.



1 (2) For purposes of this section, a telephone utility, or
2 a corporation that holds a controlling interest in the
3 telephone utility, or any business that is a subsidiary or
4 affiliate of the telephone utility, that has the telephone
5 billing records of, or any applications for telephone
6 service from, an unlicensed household goods carrier shall
7 provide the commission, or an authorized official of the
8 commission, upon ~~demand~~—*order of a magistrate*, access
9 to these business records.

10 (c) Any telephone utility operating under the
11 jurisdiction of the commission shall refuse telephone
12 service to a new customer and shall disconnect telephone
13 service of an existing customer only after it is shown that
14 other available enforcement remedies of the commission
15 have failed to terminate unlawful activities detrimental
16 to the public welfare and safety, and upon receipt from
17 any authorized official of the commission of a writing,
18 signed by a magistrate, as defined by Sections 807 and 808
19 of the Penal Code, finding that probable cause exists to
20 believe that the customer is advertising or holding out to
21 the public to perform, or is performing, household goods
22 carrier services without having in force a permit issued by
23 the commission authorizing those services, or that the
24 telephone service otherwise is being used or is to be used
25 as an instrumentality, directly or indirectly, to violate or
26 to assist in violation of the laws requiring a household
27 goods carrier permit. Included in the writing of the
28 magistrate shall be a finding that there is probable cause
29 to believe that the subject telephone facilities have been
30 or are to be used in the commission or facilitation of
31 holding out to the public to perform, or in performing,
32 household goods carrier services without having in force
33 a permit issued by the commission authorizing those
34 services, and that, absent immediate and summary
35 action, a danger to public welfare or safety will result.

36 (d) Any person aggrieved by any action taken
37 pursuant to this section shall have the right to file a
38 complaint with the commission and may include therein
39 a request for interim relief. The commission shall
40 schedule a public hearing on the complaint to be held

1 within 21 calendar days of the filing and assignment of a
2 docket number to the complaint. The remedy provided
3 by this section shall be exclusive. No other action at law
4 or in equity shall accrue against any telephone utility
5 because of, or as a result of, any matter or thing done or
6 threatened to be done pursuant to this section.

7 (e) At any hearing on complaint pursuant to
8 subdivision (d), the commission staff shall have the right
9 to participate, including the right to present evidence
10 and argument and to present and cross-examine
11 witnesses. The commission staff shall have both the
12 burden of providing that the use made or to be made of
13 the telephone service is to hold out to the public to
14 perform, or to assist in performing, services as a household
15 goods carrier, or that the telephone service is being or is
16 to be used as an instrumentality, directly or indirectly, to
17 violate or to assist in violation of the licensing laws as
18 applicable to household goods carriers and that the
19 character of the acts is such that, absent immediate and
20 summary action, a danger to public welfare or safety will
21 result, and the burden of persuading the commission that
22 the telephone services should be refused or should not be
23 restored.

24 (f) The telephone utility, immediately upon refusal or
25 disconnection of service in accordance with subdivision
26 (c), shall notify the customer or subscriber in writing that
27 the refusal or disconnection of telephone service has been
28 made pursuant to a request of the commission and the
29 writing of a magistrate, and shall include with the notice
30 a copy of this section, a copy of the writing of the
31 magistrate, and a statement that the customer or
32 subscriber may request information from the commission
33 at its San Francisco or Los Angeles office concerning any
34 provision of this section and the manner in which a
35 complaint may be filed.

36 (g) Each contract for telephone service, by operation
37 of law, shall be deemed to contain the provisions of this
38 section. The provisions shall be deemed to be a part of any
39 application for telephone service. Applicants and
40 customers for telephone service shall be deemed to have

1 consented to the provisions of this section as a
2 consideration for the furnishing of the service.

3 (h) The terms “person,” “customer,” and
4 “subscriber,” as used in this section, include a subscriber
5 to telephone service, an applicant for that service, a
6 corporation, a company, a partnership, an association,
7 and an individual.

8 (i) The term “telephone utility,” as used in this
9 section, includes a “telephone corporation” and a
10 “telegraph corporation,” as defined in Division 1
11 (commencing with Section 201).

12 (j) The term “authorized official,” as used in this
13 section, includes the Executive Director of the Public
14 Utilities Commission or any commission employee
15 designated pursuant to paragraph (5) of subdivision (a)
16 of Section 830.11 of the Penal Code.

17 SEC. 2. No reimbursement is required by this act
18 pursuant to Section 6 of Article XIII B of the California
19 Constitution because the only costs that may be incurred
20 by a local agency or school district will be incurred
21 because this act creates a new crime or infraction,
22 eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition
25 of a crime within the meaning of Section 6 of Article
26 XIII B of the California Constitution.

27 Notwithstanding Section 17580 of the Government
28 Code, unless otherwise specified, the provisions of this act
29 shall become operative on the same date that the act
30 takes effect pursuant to the California Constitution.